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October 11, 2017

VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: Notice of Ex Parte Communication
Review of Local Radio Ownership Rules - Embedded Radio Markets
MB Docket Nos. 09-182 and 14-50

Dear Ms. Dortch:

On October 6, 2017, David Oxenford and Bryan Tramont, on behalf of Connoisseur Media, LLC ("Connoisseur"), met with Commissioner Brendan Carr and his acting legal advisor for media, Nirali Patel, to discuss the treatment under the Commission's multiple ownership rules of radio stations that are home to embedded markets in major metropolitan areas.[1]

Connoisseur's counsel explained that the current FCC policy in two metropolitan areas – New York and Washington, DC – prevents a licensee with stations in one embedded market from buying stations in another embedded market is contrary to the public interest and needs to be changed. The current policy makes the licensee of an embedded market station comply not only with the ownership requirements in the embedded market, but also in the parent market. Making embedded market licensees comply with the ownership limits in the parent market, even though their stations are not significant competitors in that parent market, makes no sense. Even if one owner was able to acquire every station in every embedded market in either New York or Washington (which would be impossible because of the ownership rules in each of the embedded markets) that owner would have at most about half the market share of the leading ownership groups in those parent markets.

[1] Connoisseur filed a Petition for Reconsideration of the Commission's treatment of embedded markets in the *Second Report and Order* in the referenced dockets. See *2014 Quadrennial Regulatory Review – Review of the Commission's Broadcast Ownership Rules and Other Rules Adopted Pursuant to Section 202 of the Telecommunications Act of 1996*, *Second Report and Order*, MB Docket Nos. 14-50, 09-182, 07-294, and 04-256, 31 FCC Rcd 9864 (2016).

Connoisseur's proposal to allow the owners of embedded market stations to acquire stations in other embedded markets without having to comply with the ownership limits in the parent market is unopposed, and supported on the record by the NAB, by other broadcasters, and by a large advertising buyer in the New York market. Granting this relief would allow the embedded market owners to be able to reach regional advertisers and help them overcome the competitive imbalance that they currently face. Connoisseur has provided significant information in the record to demonstrate that the revenues of stations in these embedded markets are significantly less than that revenues for stations in comparably sized radio markets as so much advertising in these embedded markets is diverted to stations in the parent market, and the embedded market owners cannot build the scale necessary to compete for regional and national advertising with these parent-market competitors.

Connoisseur has submitted substantial information showing that, while stations in the heart of the parent market compete in the embedded markets, those stations in the embedded markets do not compete in either the parent market or in other embedded markets. The current policy that prevents an owner from one embedded market from owning stations in another embedded market is at odds with Commission rules that, in other Nielsen markets, allow one company to own the maximum number of stations in multiple immediately adjacent markets, even though some of those stations may have some listeners in those adjacent markets. For example, the adjacent Pensacola and Mobile radio markets are considered separately, and one company owns the maximum number of stations in each market, even though many of the stations from each market are located at a single, centrally-located tower farm. There are dozens of instances where, in one radio market, there are stations from physically adjacent markets which have significant listening in the markets (including but by no means limited to Savannah and Hilton Head, Boston and Wooster, Los Angeles and Riverside/San Bernardino and Oxnard/Ventura), yet one owner could own the maximum number of stations allowed by the multiple ownership rules in each of these markets. Yet only in embedded markets, despite Connoisseur's showing that stations in one embedded market are not truly competitive in any other embedded market, are owners restricted in their regional holdings. Connoisseur is gathering additional information about the competitive situation in adjacent markets that are allowed by Commission rules to demonstrate that this treatment of embedded market stations is an anomaly under Commission rules that needs to be rectified, and hopes to file that information shortly in a supplemental statement.

Connoisseur believes that BIA already provides a safeguard against any gaming of its proposed regulatory presumption, as BIA classifies the one station licensed to a community in an embedded market but located on the Empire State Building to be a New York City parent market station, not one home to the Long Island market where its city of license lies. Connoisseur has asked for a presumption that no dual-market analysis is required, which could be rebutted if someone somehow tried to game the system. To alleviate any potential concerns about abuse of the policy change urged by Connoisseur, counsel indicated that Connoisseur would be comfortable with the adoption of an objective standard that would demonstrate that a proposed combination would not have an anticompetitive impact on the parent market. Connoisseur proposed one in its reconsideration petition (based on the FCC's method of assessing ownership compliance in non-metro radio markets) and it would also accept another methodology proposed by the NAB (stating that any embedded market station would not be able to take advantage of this presumption if its city-grade service area covers more than 50% of the parent market).

A case-by-case waiver of the current policy is not a solution, as sellers of station clusters will not sell their stations unless they have certainty that a transaction can occur in a timely fashion - a certainty not provided by the need to seek a waiver.

Enclosed is a copy of the slide presentation distributed at the meeting. Should there be any questions concerning this matter, please contact the undersigned.

Sincerely,

David Oxenford/ed

David Oxenford

cc: Commissioner Brendan Carr
Nirali Patel

Enclosure

Narrow Unopposed Reconsideration Request

Connoisseur Media

Wilkinson Barker Knauer LLP

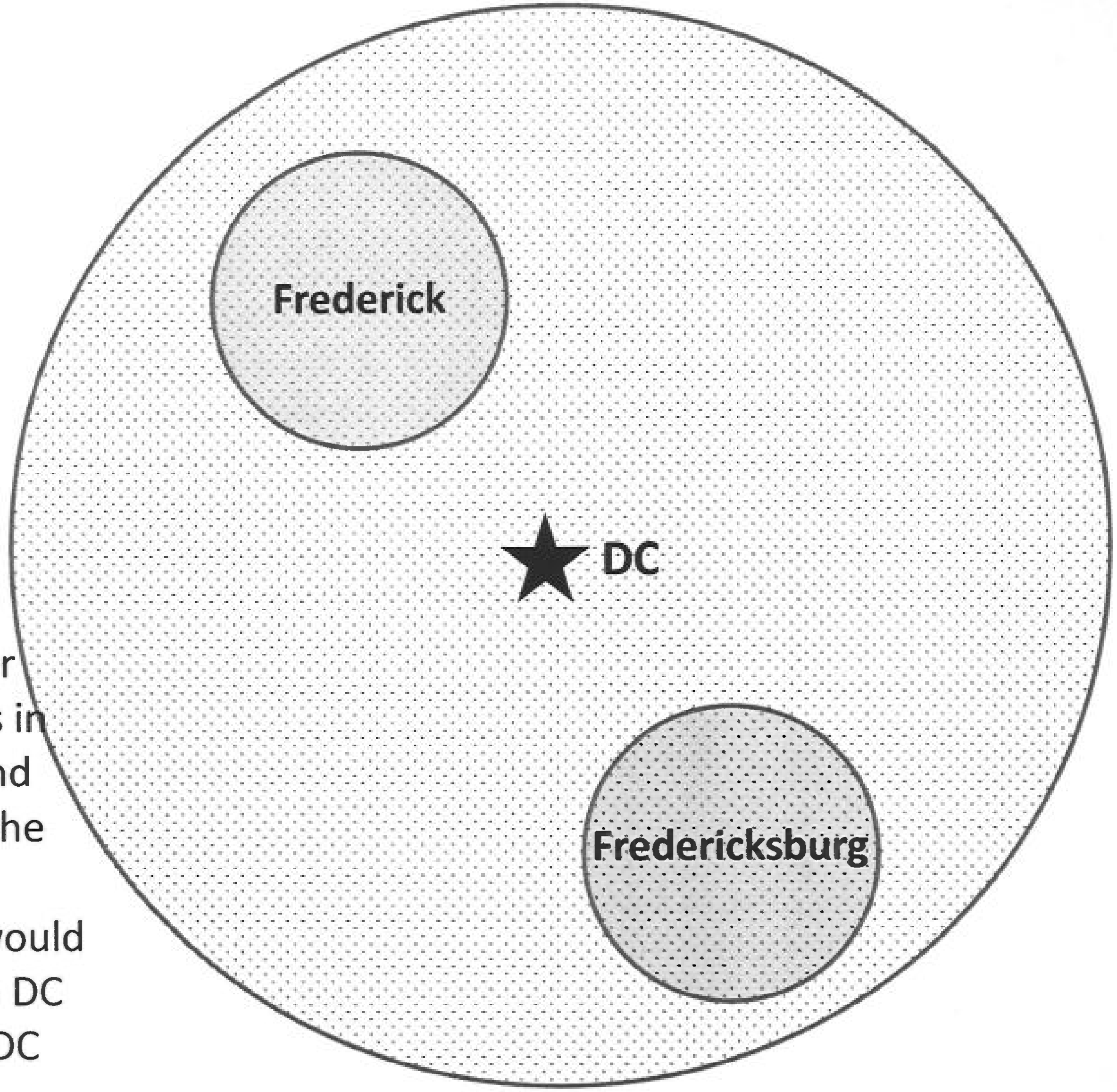
Background

- Issue arises only in two Metropolitan areas with multiple "embedded markets" - New York and Washington, DC
- Arbitron adopted this concept so that the people in the counties in embedded markets would be included in the ratings totals for the parent market making those parent markets bigger – recognizes that central city stations reach and have listeners in these outlying counties
- But also recognizes that there are separate local suburban markets in which the stations actually located in those markets compete for local advertisers
- So advertising concept that central city stations compete in the embedded markets (which is true) ended up saying, for FCC ownership purposes, that embedded market stations were competitive factors in the parent market (which is false)

Current and Proposed Policy

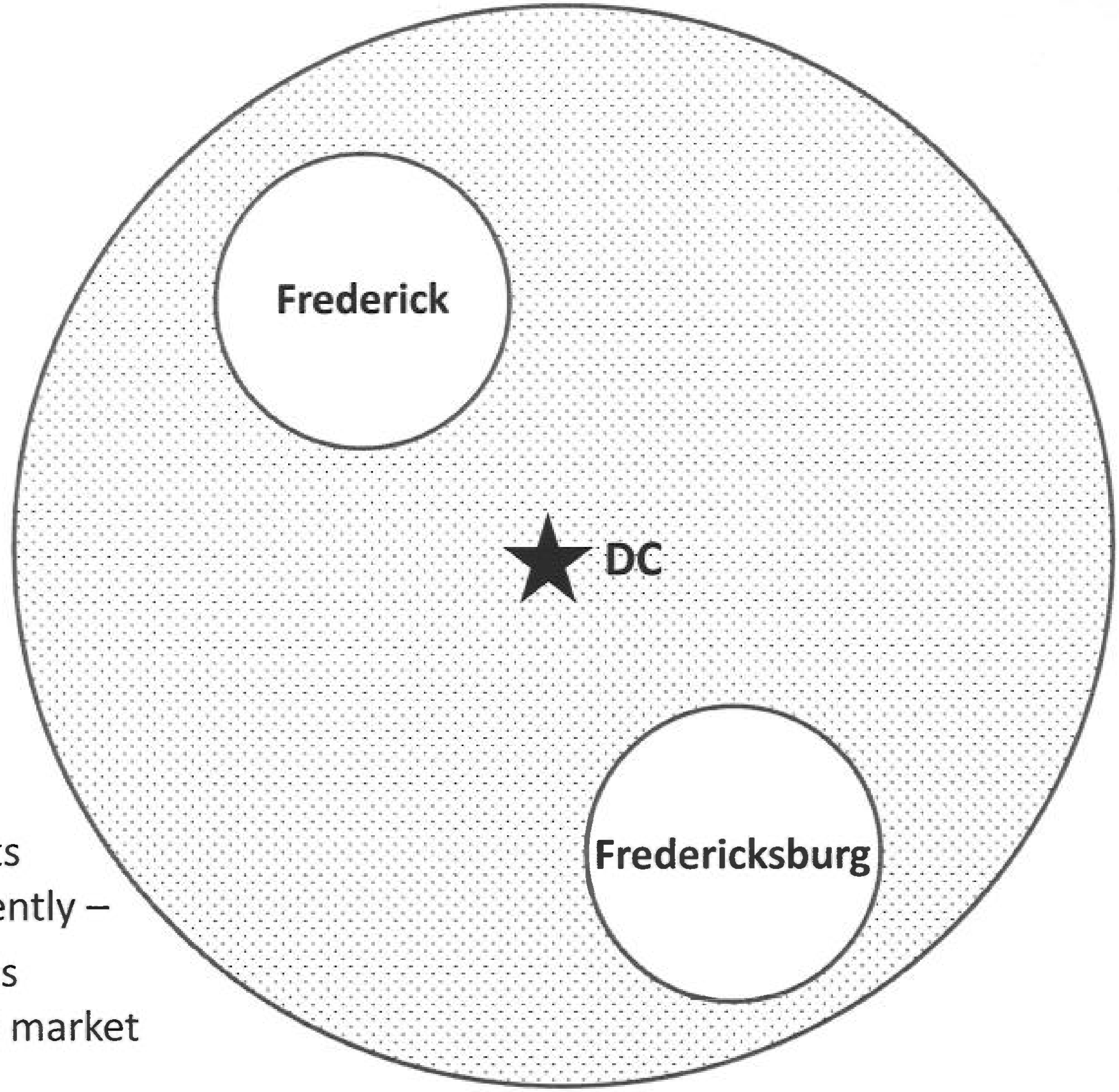
- Current– if you own stations in one embedded market, and propose to buy stations in another embedded market, even though you comply with ownership rules in each market separately, you often cannot because you violate the ownership limits in the parent market
  - Policy expressed in one footnote in 2003 order, not in rule
- Proposal – when you have *stations only in the embedded market(s)*:
  - You need only comply with the ownership limits in the embedded market
  - Current rule would still apply if you have stations in the core of the parent market
  - Belt and suspenders: contour methodology (like in Puerto Rico where FCC determined Nielsen did not make sense) or NAB-proposed coverage methodology
  - Case-by-case waiver harms the market, as sellers won't sell unless there is clear waiver standard.

Current Policy



A Frederick owner can't buy stations in Fredericksburg and vice versa when the total number of stations owned would exceed the cap in DC as both count in DC

Proposed Policy



Embedded markets treated independently –

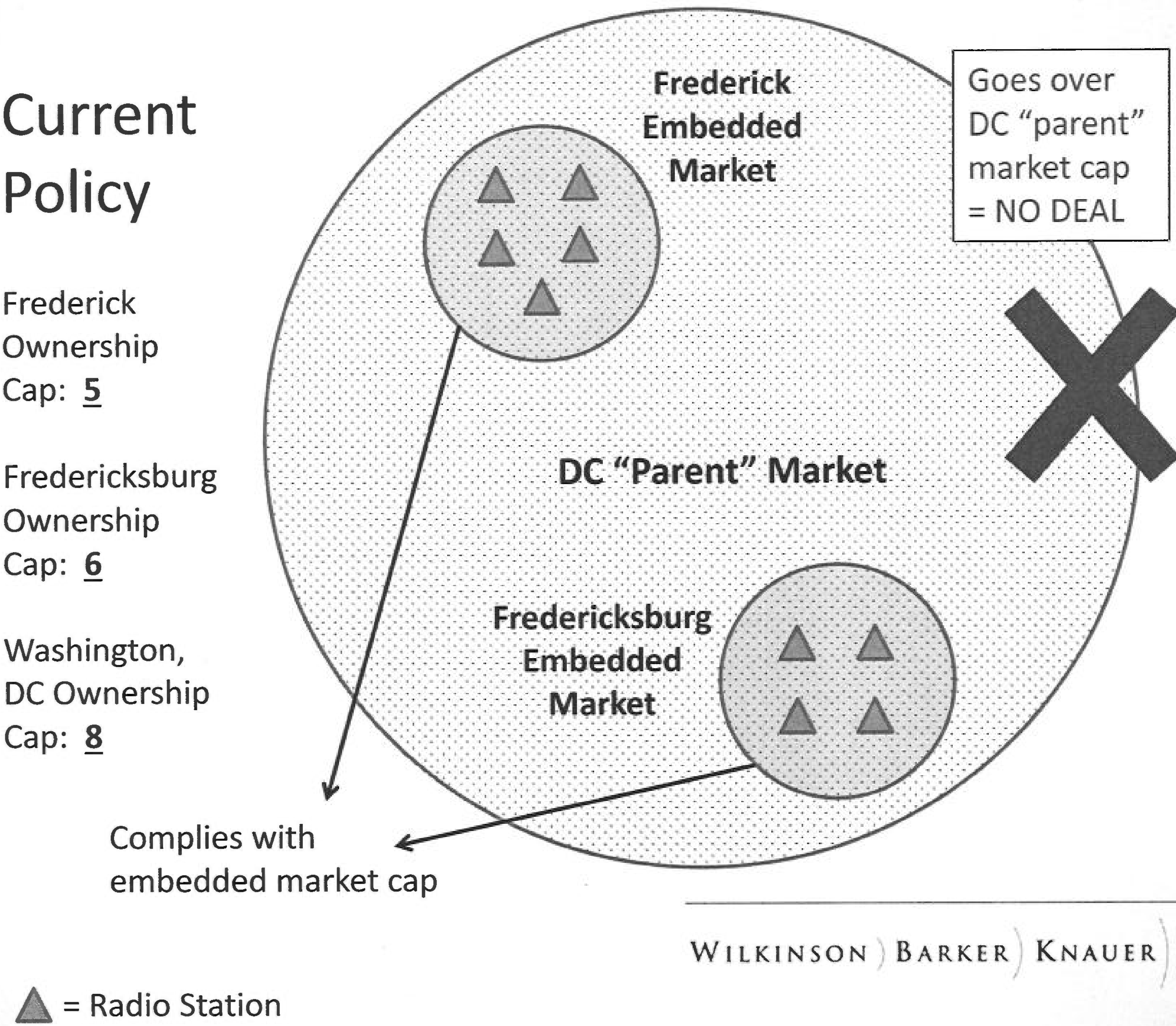
Unless licensee has interests in parent market

Current Policy

Frederick Ownership Cap: 5

Fredericksburg Ownership Cap: 6

Washington, DC Ownership Cap: 8



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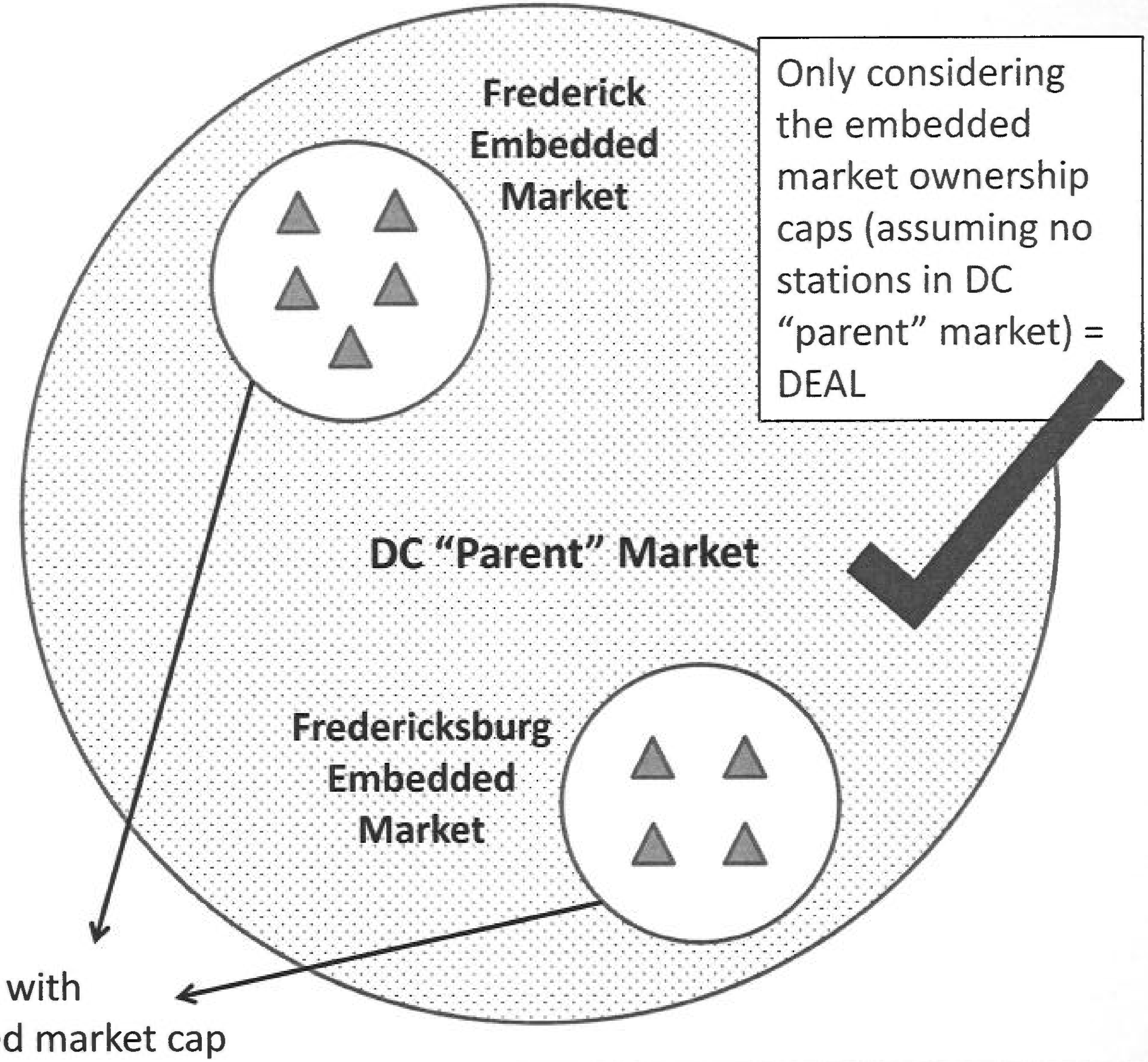

= Radio Station

Connoisseur's Petition

Supporters

- National Association of Broadcasters
- JL Media, Inc.
- Townsquare Media
- Pamal Broadcasting

Opposition

- None

Our Proposal: Eliminate the "Parent Trap"

If all interests in the Metro of the proposed attributable owner are in stations that are considered by BIA to be "home" solely to embedded markets, the application will be evaluated solely by review of the ownership limits applicable to the embedded markets, and compliance with the ownership limits in the larger parent Metro market will not be examined.

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